

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>LEE GRAGE</b> <b>NPDES NO. 7561390</b>  <b>Plymouth County, Remsen</b>	ADMINISTRATIVE CONSENT ORDER NO. 2014-AFO- <b>23</b>
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TO: Lee Grage d/b/a Grage Farms  
44787 230<sup>th</sup> Street  
Remsen, IA 51050

**I. SUMMARY**

This administrative consent order (order) is entered into between the Iowa Department of Natural Resources (Department) and Lee Grage d/b/a Grage Farms (Grage Farms) for the purpose of resolving violations of the facility's National Pollutant Discharge Elimination System (NPDES) permit. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this order should be directed to:

**Relating to technical requirements:**

Don Cunningham, Field Office 3  
Iowa Department of Natural Resources  
  
1900 Grand Avenue  
Spencer, Iowa 51301  
Phone: 712/262-4177

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney for the  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa Department of Natural  
Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: Lee Grage d/b/a Grage Farms, Remsen, Iowa

prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Grage Farms is a 2,500 head of finishing beef cattle open feedlot located in the SE ¼ of Section 5, T91N, R43W Henry Township, Plymouth County, Iowa. The deed to this property is held by Lee and Jean K. Grage.

2. On November 12, 2009, NPDES Permit No. 7561390 was issued to the facility. Section VI, Paragraph A of the permit requires that all monitoring results shall be reported to the Department on a quarterly basis. The quarterly reports shall cover the periods January through March, April through June, July through September and October through December. The quarterly report for each period shall be submitted by the 10<sup>th</sup> day of the month following the quarter being reported. Section VI, Paragraph B of the permit requires that the facility must submit a federally mandated annual report by January 10 of the following year to the Department.

3. On January 20, 2012, the Department sent Grage Farms a Notice of Violation (NOV) for failure to submit its annual report for 2011. On February 17, 2012, Grage Farms submitted the 2012 annual report to the Department.

4. On April 20, 2012, the Department sent Grage Farms a NOV for failure to submit the quarterly report due April 10, 2012. On May 1, 2012, Grage Farms submitted the relevant quarterly report to the Department.

5. On October 20, 2013, the Department sent Grage Farms a NOV for failure to submit its quarterly report due October 10, 2013. On November 18, 2013, Grage Farms submitted the relevant quarterly report to the Department.

6. On April 20, 2014, the Department sent Grage Farms a NOV for failure to submit its quarterly report due April 10, 2014. On May 9, 2014, Grage Farms submitted the relevant quarterly report to the Department.

7. On July 22, 2014, the Department sent Grage Farms a NOV for failure to submit its quarterly report due to the Department on July 10, 2014. This NOV also informed Grage Farms that the matter was being referred to the Department's Legal Services Bureau for enforcement. On July 28, 2014, the relevant quarterly report was submitted to the Department.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: Lee Grage d/b/a Grage Farms, Remsen, Iowa

**IV. CONCLUSIONS OF LAW**

1. 567 IAC 65.104(9) "e" states that a facility with an NPDES permit must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. Section VI Paragraph A of Grage Farms' NPDES permit contains this same requirement. The quarterly reports shall cover the periods January through March, April through June, July through September and October through December. The quarterly report for each period shall be submitted by the 10<sup>th</sup> day of the month following the quarter being reported. Grage Farms failed to submit the required quarterly reports on 5 different occasions. Thus, the above stated facts indicate a violation of the IAC and the facility's NPDES permit.

2. 40 Code of Federal Regulations (CFR) 122.42 (e)(4) and 567 IAC 65.104(9) "f" requires that a facility with an NPDES permit must submit an annual report to the Department by January 10 of the following year. Section VI Paragraph B of Grage Farms' NPDES permit contains this same requirement. Grage Farms failed to timely submit the 2011 annual report. Thus, the above stated facts indicate a violation the CFR, IAC and the facility's NPDES permit.

**V. ORDER**

THEREFORE, the Department orders and Grage Farms agrees to do the following:

1. In the future Grage Farms shall timely submit all reports required by its NPDES permit; and
2. Grage Farms shall pay an administrative penalty of \$3,000.00 within 30 days from the date the Director signs this order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: Lee Grage d/b/a Grage Farms, Remsen, Iowa

addressing the above-cited violations is the issuance of an order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Grage Farms has gained an economic advantage by delaying the costs associated with the reporting requirements. The economic benefit is estimated to be at least \$100.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The reporting dates are a requirement of the regulations and the facility's NPDES permit. Failure to comply with the reporting requirements threatens the integrity of the animal feeding operation program. Therefore, \$1,400.00 is assessed for this factor.

Culpability – Grage Farms has a duty to remain knowledgeable of Department's requirements and to be alert to the probability that its conduct is subject to the Department's rules. Grage Farms was aware of the reporting requirements and has been repeatedly reminded of the requirements. Therefore, \$1,500.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
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**VII. WAIVER OF APPEAL RIGHTS**

This order is entered into knowingly and with the consent of Grage Farms. For that reason Grage Farms waives its right to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp  
Chuck Gipp, DIRECTOR  
Iowa Department of Natural Resources

Dated this 31<sup>st</sup> day of  
December, 2014.

Lee Grage  
Lee Grage d/b/a Grage Farms

Dated this 16 day of  
Dec, 2014

Facility # 7561390; Carrie Schoenebaum, Don Cunningham (Field Office 3), EPA, VIII.B.1

